IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

WP(C).No. 25725 of 2004(K)

PETITIONER:

MATTAYIL PRABHAKARAN, 53 YEARS,
S/O. MATTAYIL JANAKI AMMA,
MATTAYIL HOUSE, THRIKANDIYOOR AMSOM & DESOM,
TIRUR POST, TIRUR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.P.T.MOHANKUMAR
SRI.ARLISS TRENCY ANTONY

RESPONDENTS:
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1. **K.S.E.B., REPRESENTED BY ITS SECRETARY,**
   VAIDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.

2. **THE DEPUTY CHIEF ENGINEER,**
   APTS, OFFICE OF THE DEPUTY CHIEF ENGINEER (APTS),
   KSEB, NORTHERN REGION, KOZHIKODE-673 032.

3. **THE ASSISTANT ENGINEER, APTS (RU),**
   KSEB, KOZHIKODE-673 032.

4. **THE ASSISTANT ENGINEER, ELECTRICAL**
   SECTION, K.S.E.B., RAMANATTUKARA-673 622.

BY ADV. SRI.N.N.SUGUNAPALAN, SC, KSEB
SRI.C.K.KARUNAKARAN SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.25725/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1(a):- COPY OF THE COMMUNICATION DT. 13.11.01 ISSUED BY THE ASSISTANT EXECUTIVE ENGINEER, ELECTRICAL MAJOR SECTION, RAMANATTUKARA DEMANDING A SUM OF RS. 91,509/- ALLEGEDLY AS PENAL CHARGES.

EXT.P1(b):- COPY OF THE CALCULATION SHEET SIGNED BY A SENIOR SUPERINTENDENT, ELECTRICAL MAJOR SECTION.

EXT.P2:- COPY OF THE ORDER DT. 29.6.04 PASSED BY THE 2ND RESPONDENT.

EXT.P3:- COPY OF THE MAHAZAR DT. 6.10.01 PREPARED BY THE IST RESPONDENTS OFFICIALS.

EXT.P4:- COPY OF THE INVOICE DT. 16.11.01.

EXT.P5:- COPY OF THE COMMUNICATION ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER DT. 9.8.04.

ANNEXURE :- COPY OF THE REPORT OF ASST. ENGINEER, ELECTRICAL SECTION, RAMANATTUKARA.

/TRUE COPY/

P.S. TO JUDGE

tss

KURIAN JOSEPH, J.

W.P(C) No.25725 of 2004

Dated this the 23rd day of November, 2007

JUDGMENT

The writ petition is filed mainly with the following prayers:-

> a) Issue a writ, order or direction in the nature of certiorari or other appropriate form of writ quashing Ext.P2 order issued by the 2nd respondent, authorising realisation of an amount of Rs.91,509/- (Ninetyone thousand five hundred and nine) as alleged penal charges from the petitioner as the same is illegal, excessive, arbitrary and assessed without any basis.
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> b) A writ, order or direction commanding the respondents to repay the sum of Rs.36,604/- (Rupees Thirtysix thousand six hundred and four) already paid by the petitioner to the credit of the 1st respondent together with interest at such rate as this Hon'ble Court may fix.

As far as penalty for unauthorised connected load is concerned, it is now settled law in view of the Bench decision of this Court in W.A.No.1231/2003 that the penalty has to be limited to the fixed charge portion. It is held that there shall not be any penalty by way of proportionate energy charges. The impugned demands are quashed making it clear that the liability of the petitioner shall only be for the

penalty for fixed charge portion. The revised demand shall be issued to the petitioner and the amounts already remitted by the petitioner shall be adjusted.

The writ petition is disposed of as above.

(KURIAN JOSEPH, JUDGE)

ahg.

KURIAN JOSEPH, J.

W.P(C).No.25725 of 2004

JUDGMENT

23rd November, 2007